

AMENDED IN SENATE JUNE 23, 2009

AMENDED IN SENATE JUNE 11, 2009

AMENDED IN ASSEMBLY MARCH 24, 2009

AMENDED IN ASSEMBLY FEBRUARY 10, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 33**

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**Introduced by Assembly Member Nava**

December 1, 2008

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An act to amend Sections 11302 and 11310 of, to amend and repeal ~~Section 10015 of~~, and to amend, repeal, and add Sections 10000, 10050, 11301, and 11313 of, the Business and Professions Code, to amend, repeal, and add Sections 25005 and 31004 of the Corporations Code, to amend Sections 4970 and 23001 of, to amend and repeal Section 252 of, to amend, repeal, and add Sections 112, 210, 4805.055, 5104, 5106, 12003, 14003, 17002, 18002, 18002.5, 22005, 30002, 31055, and 33045.5 of, to add Sections 23002 and 50003.5 to, and to add Division 0.5 (commencing with Section 25) to, the Financial Code, and to amend, repeal, and add Sections 13975 and 13978.6 of the Government Code, relating to financial services.

### **LEGISLATIVE COUNSEL’S DIGEST**

AB 33, as amended, Nava. Financial services.

Existing law establishes the Department of Financial Institutions, the Department of Corporations, the Department of Real Estate, and the Office of Real Estate Appraisers in the Business, Transportation and Housing Agency.

Existing law provides for the licensing and regulation of, among others, banks, credit unions, and other financial institutions by the Commissioner of Financial Institutions. Existing law provides for the licensing and regulation of, among others, residential mortgage lenders and finance lenders by the Commissioner of Corporations. Existing law provides for the licensing and regulation of, among others, real estate brokers and salespersons by the Real Estate Commissioner. Existing law provides for the licensure and regulation of real estate appraisers by the Director of the Office of Real Estate Appraisers.

This bill would do the following, effective July 1, 2011: (1) establish a new Department of Financial Services (DFS) in the Business, Transportation and Housing Agency (BTHA), (2) designate the chief officer of DFS as the Commissioner of Financial Services, (3) transfer the powers, duties, purposes, jurisdiction, responsibilities, and functions of the DOC and DFI to 2 new divisions under the DFS, the Division of Corporations and the Division of Financial Institutions, (4) designate the Commissioner of Corporations and the Commissioner of Financial Institutions as the directors of the Division of Corporations and the Division of Financial Institutions, respectively, (5) establish a new Office of Financial *and Real Estate* Consumer Advocacy within the DFS, and (6) transfer authority over real estate appraisers to the Department of Real Estate (DRE) under the Real Estate Law.

This bill would, effective July 1, 2012, transfer from the DRE to the Division of Corporations the authority to license and regulate real estate licensees that provide lending, mortgage brokerage services, and business opportunity activities, *as specified*.

In order to implement the above provisions, this bill would require the BTHA, DFI, DOC, DRE, and the Office of Real Estate Appraisers to, on or before January 1, 2011, make specified recommendations regarding the consolidation of these entities or their respective operations. The bill would make findings and declarations in this regard, and would make technical and conforming changes to related provisions and definitions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

1 (a) The regulation and oversight of financial services in  
2 California is principally divided between two regulators, the  
3 Department of Financial Institutions and the Department of  
4 Corporations.

5 (b) California is one of only a few states that separate the  
6 regulation of financial services among different licensing agencies.  
7 California is also anomalous in that three state departments regulate  
8 and oversee mortgage brokerage as well as the sale of specified  
9 business opportunity activities.

10 (c) This division of oversight is most apparent in the regulation  
11 of home mortgage lending that is split among multiple licensing  
12 schemes, including the California Finance Lenders Law, the  
13 California Residential Mortgage Lending Act, the Real Estate Law,  
14 and laws governing the operation of state and federally chartered  
15 banks or credit unions. *This division of oversight has made it*  
16 *cumbersome and expensive for California to consistently*  
17 *implement, across three departments, major advancements in*  
18 *consumer protection such as the federal guidance on nontraditional*  
19 *mortgage product risks and statement on subprime mortgage*  
20 *lending, the SAFE Mortgage Licensing Act and, most recently, the*  
21 *California Foreclosure Prevention Act.*

22 (d) The Department of Real Estate and the Office of Real Estate  
23 Appraisers protect consumers in real estate transactions by  
24 licensing real estate agents and appraisers, respectively.

25 (e) This partition of regulation dilutes consumer protection and  
26 creates confusion and unnecessary administrative difficulties for  
27 financial services entities.

28 (f) The current regulatory system creates licensing arbitrage,  
29 with entities seeking out licenses from various regulators in order  
30 to obtain an advantage.

31 (g) *It is in the public's best interest effective July 1, 2011, to*  
32 *have a single regulator, the Commissioner of a new Department*  
33 *of Financial Services, ultimately responsible for the regulation of*  
34 *financial services in California previously spread among the*  
35 *Department of Corporations to be transferred intact to the new*  
36 *Department of Financial Services as the Division of Corporations,*  
37 *the Department of Financial Institutions to be transferred intact*  
38 *to the new Department of Financial Services as the Division of*  
39 *Financial Institutions, and the Department Real Estate, which*  
40 *shall remain as a separate department, but which, effective July*

1 *1, 2012, shall transfer its regulation of financial services with the*  
2 *same level of consumer protections to the new Division of*  
3 *Corporations within the Department of Financial Services as set*  
4 *forth in subdivision (d) of Section 25 of Division 0.5 of the*  
5 *Financial Code. It is in the public's best interest to combine the*  
6 *other operations of the Department of Real Estate and the Office*  
7 *of Real Estate Appraisers while remaining compliant with federal*  
8 *provisions related to the regulation of real estate appraisers.*

9 *(h) It is in the public's best interest at this time to not expand*  
10 *or contract existing authorities of the existing departments,*  
11 *commissioners, or directors upon transfer and renaming except*  
12 *as set forth in subdivision (d) of Section 25 of Division 0.5 of the*  
13 *Financial Code. It is in the public's best interest at this time to not*  
14 *expand or contract any existing duties, including fiduciary duties,*  
15 *of their licensees. It is, however, in the public's best interest to*  
16 *have the outgoing administration collect public comment and make*  
17 *recommendations on a series of potential future changes for later*  
18 *consideration by the Legislature, and regulators as set forth in*  
19 *Sections 48 to 50, inclusive, of Division 0.5 of the Financial Code.*

20 *(i) It is in the public's best interest to create a formal Office of*  
21 *Financial and Real Estate Consumer Advocacy to advise the*  
22 *Commissioner of Financial Services and the Real Estate*  
23 *Commissioner on how their departments can provide a high degree*  
24 *of service and protection to the public, and to be responsible for*  
25 *outreach to financial real estate consumers.*

26 SEC. 2. Section 10000 of the Business and Professions Code  
27 is amended to read:

28 10000. This part may be cited as the Real Estate Law.

29 This section shall become inoperative on July 1, 2011, and, as  
30 of January 1, 2012, is repealed, unless a later enacted statute, that  
31 becomes operative on or before January 1, 2012, deletes or extends  
32 the dates on which it becomes inoperative and is repealed.

33 SEC. 3. Section 10000 is added to the Business and Professions  
34 Code, to read:

35 10000. (a) This part and Part 3 (commencing with Section  
36 11300) may be cited as the Real Estate Law.

37 (b) This section shall become operative on July 1, 2011.

38 SEC. 4. Section 10050 of the Business and Professions Code  
39 is amended to read:

1 10050. There is in the Business and Transportation Agency a  
2 Department of Real Estate, the chief officer of which department  
3 is named the Real Estate Commissioner.

4 It shall be the principal responsibility of the commissioner to  
5 enforce all laws in this part (commencing with Section 10000) and  
6 Chapter 1 (commencing with Section 11000) of Part 2 of this  
7 division in a manner which achieves the maximum protection for  
8 the purchasers of real property and those persons dealing with real  
9 estate licensees.

10 This section shall become inoperative on July 1, 2011, and, as  
11 of January 1, 2012, is repealed, unless a later enacted statute, that  
12 becomes operative on or before January 1, 2012, deletes or extends  
13 the dates on which it becomes inoperative and is repealed.

14 SEC. 5. Section 10050 is added to the Business and Professions  
15 Code, to read:

16 10050. (a) There is in the Business and Transportation Agency  
17 a Department of Real Estate, the chief officer of which department  
18 is named the Real Estate Commissioner.

19 (b) It shall be the principal responsibility of the commissioner  
20 to enforce all laws in this part (commencing with Section 10000),  
21 Chapter 1 (commencing with Section 11000) of Part 2, and Part  
22 3 (commencing with Section 11300) of this division, subject to  
23 subdivision (c) of Section 49 of the Financial Code, in a manner  
24 that achieves the maximum protection for the purchasers of real  
25 property and those persons dealing with real estate licensees and  
26 real estate appraisers.

27 (c) This section shall become operative on July 1, 2011.

28 SEC. 6. Section 11301 of the Business and Professions Code  
29 is amended to read:

30 11301. There is hereby created within the Business,  
31 Transportation and Housing Agency an Office of Real Estate  
32 Appraisers to administer and enforce this part.

33 This section shall become inoperative on July 1, 2011, and, as  
34 of January 1, 2012, is repealed, unless a later enacted statute, that  
35 becomes operative on or before January 1, 2012, deletes or extends  
36 the dates on which it becomes inoperative and is repealed.

37 SEC. 7. Section 11301 is added to the Business and Professions  
38 Code, to read:

1 11301. (a) There is hereby created within the Department of  
2 Real Estate an Office of Real Estate Appraisers to administer and  
3 enforce this part.

4 (b) This section shall become operative on July 1, 2011.

5 SEC. 8. Section 11302 of the Business and Professions Code  
6 is amended to read:

7 11302. For the purpose of applying this part, the following  
8 terms, unless otherwise expressly indicated, shall mean and have  
9 the following definitions:

10 (a) "Agency" means the Business, Transportation and Housing  
11 Agency.

12 (b) "Appraisal" means a written statement independently and  
13 impartially prepared by a qualified appraiser setting forth an  
14 opinion in a federally related transaction as to the market value of  
15 an adequately described property as of a specific date, supported  
16 by the presentation and analysis of relevant market information.

17 The term "appraisal" does not include an opinion given by a real  
18 estate licensee or engineer or land surveyor in the ordinary course  
19 of his or her business in connection with a function for which a  
20 license is required under Chapter 7 (commencing with Section  
21 6700) or Chapter 15 (commencing with Section 8700) of Division  
22 3, or Chapter 3 (commencing with Section 10130) or Chapter 7  
23 (commencing with Section 10500) and the opinion shall not be  
24 referred to as an appraisal. This part does not apply to a probate  
25 referee acting pursuant to Sections 400 to 408, inclusive, of the  
26 Probate Code unless the appraised transaction is federally related.

27 (c) "Appraisal Foundation" means the Appraisal Foundation  
28 that was incorporated as an Illinois not-for-profit corporation on  
29 November 30, 1987.

30 (d) "Appraisal Subcommittee" means the Appraisal  
31 Subcommittee of the Federal Financial Institutions Examination  
32 Council.

33 (e) "Director" means the Director of the Office of Real Estate  
34 Appraisers.

35 (f) "Federal financial institutions regulatory agency" means the  
36 Federal Reserve Board, Federal Deposit Insurance Corporation,  
37 Office of the Comptroller of the Currency, Office of Thrift  
38 Supervision, Federal Home Loan Bank System, National Credit  
39 Union Administration, the Resolution Trust Corporation, and any

1 other agency determined by the director to have jurisdiction over  
2 transactions subject to this part.

3 (g) “Federally related real estate appraisal activity” means the  
4 act or process of making or performing an appraisal on real estate  
5 or real property in a federally related transaction and preparing an  
6 appraisal as a result of that activity.

7 (h) “Federally related transaction” means any real estate-related  
8 financial transaction which a federal financial institutions  
9 regulatory agency engages in, contracts for or regulates and which  
10 requires the services of a state licensed real estate appraiser  
11 regulated by this part. This term also includes any transaction  
12 identified as such by a federal financial institutions regulatory  
13 agency.

14 (i) “License” means any license, certificate, permit, registration,  
15 or other means issued by the office authorizing the person to whom  
16 it is issued to act pursuant to this part within this state.

17 (j) “Licensure” means the procedures and requirements a person  
18 shall comply with in order to qualify for issuance of a license and  
19 includes the issuance of the license.

20 (k) “Office” means the Office of Real Estate Appraisers.

21 (l) “Secretary” means the Secretary of the Business,  
22 Transportation and Housing Agency.

23 (m) “State licensed real estate appraiser” is a person who is  
24 issued and holds a current valid license under this part.

25 (n) “Uniform Standards of Professional Appraisal Practice” are  
26 the standards of professional appraisal practice established by the  
27 Appraisal Foundation.

28 (o) “Course provider” means a person or entity that provides  
29 educational courses related to professional appraisal practice.

30 (p) “Commissioner” means the Real Estate Commissioner.

31 SEC. 9. Section 11310 of the Business and Professions Code  
32 is amended to read:

33 11310. The Governor shall appoint, subject to confirmation  
34 by the Senate, the Director of the Office of Real Estate Appraisers  
35 who shall administer the licensing and certification program for  
36 real estate appraisers. In making the appointment, consideration  
37 shall be given to the qualifications of an individual that demonstrate  
38 knowledge of the real estate appraisal profession.

39 (a) (1) Prior to July 1, 2011, the director shall serve at the  
40 pleasure of the Governor and shall administer the licensing and

1 certification program in consultation with the Governor and  
2 secretary. The salary for the director shall be fixed and determined  
3 by the secretary with approval of the Department of Personnel  
4 Administration.

5 (2) On and after July 1, 2011, the director shall serve at the  
6 pleasure of the Governor and shall administer the licensing and  
7 certification program in consultation with the Governor and the  
8 commissioner. The salary for the director shall be fixed and  
9 determined by the commissioner with approval of the Department  
10 of Personnel Administration.

11 (3) *Firewalls shall be maintained between the Department of*  
12 *Real Estate and the Office of Real Estate Appraisers and its*  
13 *employees as required in order to ensure compliance with federal*  
14 *law, to protect the independence of the appraiser regulatory*  
15 *function from realty-related activities, and to ensure that decisions*  
16 *relating to appraisal license issuance, revocation, and disciplinary*  
17 *actions shall be made by the Director of the Office of Real Estate*  
18 *Appraisers and not by the Real Estate Commissioner.*

19 (b) The director shall not be actively engaged in the appraisal  
20 business or any other affected industry for the term of appointment,  
21 and thereafter the director shall be subject to Section 87406 of the  
22 Government Code.

23 (c) The director, in consultation with the secretary or, on and  
24 after July 1, 2011, in consultation with the commissioner, and in  
25 accordance with the State Civil Service Act, may appoint and fix  
26 the compensation of legal, clerical, technical, investigation, and  
27 auditing personnel as may be necessary to carry out this part. All  
28 personnel shall perform their respective duties under the  
29 supervision and direction of the director.

30 (d) The director may appoint not more than four deputy directors  
31 as he or she deems appropriate. The deputy directors shall perform  
32 their respective duties under the supervision and direction of the  
33 director.

34 (e) Every power granted to or duty imposed upon the director  
35 under this part may be exercised or performed in the name of the  
36 director by the deputy directors, subject to conditions and  
37 limitations as the director may prescribe.

38 SEC. 10. Section 11313 of the Business and Professions Code  
39 is amended to read:



1 11313. The office is under the supervision and control of the  
2 secretary. The duty of enforcing and administering this part is  
3 vested in the director and he or she is responsible to the secretary  
4 therefor. The director shall adopt and enforce rules and regulations  
5 as are determined reasonably necessary to carry out the purposes  
6 of this part. Those rules and regulations shall be adopted pursuant  
7 to Chapter 3.5 (commencing with Section 11340) of Part 1 of  
8 Division 3 of Title 2 of the Government Code.

9 This section shall become inoperative on July 1, 2011, and, as  
10 of January 1, 2012, is repealed, unless a later enacted statute, that  
11 becomes operative on or before January 1, 2012, deletes or extends  
12 the dates on which it becomes inoperative and is repealed.

13 SEC. 11. Section 11313 is added to the Business and  
14 Professions Code, to read:

15 11313. (a) The office is under the supervision and control of  
16 the commissioner. The duty of enforcing and administering this  
17 part is vested in the director and he or she is responsible to the  
18 commissioner therefor. The director shall adopt and enforce rules  
19 and regulations as are determined reasonably necessary to carry  
20 out the purposes of this part. Those rules and regulations shall be  
21 adopted pursuant to Chapter 3.5 (commencing with Section 11340)  
22 of Part 1 of Division 3 of Title 2 of the Government Code.

23 (b) This section shall become operative on July 1, 2011.

24 SEC. 12. Section 25005 of the Corporations Code is amended  
25 to read:

26 25005. "Commissioner" means the Commissioner of  
27 Corporations.

28 This section shall become inoperative on July 1, 2011, and, as  
29 of January 1, 2012, is repealed, unless a later enacted statute, that  
30 becomes operative on or before January 1, 2012, deletes or extends  
31 the dates on which it becomes inoperative and is repealed.

32 SEC. 13. Section 25005 is added to the Corporations Code, to  
33 read:

34 25005. (a) As used in this part, the following terms have the  
35 following meanings:

36 (1) "Department of Corporations" or "department" means the  
37 Department of Financial Services, Division of Corporations.

38 (2) "Commissioner of Corporations" or "commissioner" means  
39 the Director of the Division of Corporations.

40 (b) This section shall become operative on July 1, 2011.

1 SEC. 14. Section 31004 of the Corporations Code is amended  
2 to read:

3 31004. "Commissioner" means the Commissioner of  
4 Corporations.

5 This section shall become inoperative on July 1, 2011, and, as  
6 of January 1, 2012, is repealed, unless a later enacted statute, that  
7 becomes operative on or before January 1, 2012, deletes or extends  
8 the dates on which it becomes inoperative and is repealed.

9 SEC. 15. Section 31004 is added to the Corporations Code, to  
10 read:

11 31004. (a) As used in this part, the following terms have the  
12 following meanings:

13 (1) "Department of Corporations" or "department" means the  
14 Department of Financial Services, Division of Corporations.

15 (2) "Commissioner of Corporations" or "commissioner" means  
16 the Director of the Division of Corporations.

17 (b) This section shall become operative on July 1, 2011.

18 SEC. 16. Division 0.5 (commencing with Section 25) is added  
19 to the Financial Code, to read:

20  
21 DIVISION 0.5. CONSOLIDATION OF FINANCIAL  
22 SERVICES  
23

24 25. Effective July 1, 2011, there shall be in the state  
25 government, in the Business, Transportation and Housing Agency,  
26 a Department of Financial Services, which shall consist of the  
27 following:

28 (a) The Division of Financial Institutions, comprised of the  
29 former Department of Financial Institutions, which shall be  
30 primarily responsible for the execution of all laws previously under  
31 that department's jurisdiction subject to oversight by the  
32 Commissioner of Financial Services.

33 (b) The Division of Corporations, comprised of the former  
34 Department of Corporations, which shall be primarily responsible  
35 for the execution of all laws previously under that department's  
36 jurisdiction subject to oversight by the Commissioner of Financial  
37 Services.

38 (c) The Office of Financial *and Real Estate* Consumer  
39 Advocacy, which shall advise the Commissioner of Financial  
40 Services *and the Real Estate Commissioner* on how the Department

1 of Financial Services can provide a high degree of service and  
2 protection to the public, shall be responsible for public outreach  
3 to financial consumers, and real estate consumers, with the  
4 cooperation of the Departments of Financial Services and Real  
5 Estate and shall perform such other duties as determined by the  
6 Commissioner of Financial Services.

7 (d) (1) Effective July 1, 2012, the Department of Financial  
8 Services, through the Division of Corporations, shall license and  
9 regulate mortgage brokers, including those real estate licensees  
10 who arrange loans secured by real property in the state, and shall  
11 license and regulate those real estate licensees who provide  
12 commercial and residential lending and business opportunity  
13 activities, as determined pursuant to Section 48, all of whom shall  
14 be deemed to be fiduciaries in their relationship with, and have  
15 attendant fiduciary duties toward, their principals, including, but  
16 not limited to, those activities described in Section 10008.5, Section  
17 10030, subdivisions (d) and (e) of Section 10131, and Section  
18 10131.1 of the Business and Professions Code, while maintaining  
19 the same level of consumer protection now afforded. Nothing in  
20 this act or the regulations it authorizes shall expand or diminish  
21 existing consumer protections.

22 (2) (A) On or before January 1, 2012, the Commissioner of  
23 Financial Services, in consultation with the Director of the Division  
24 of Corporations and the Real Estate Commissioner, shall adopt  
25 regulations creating a new license or licenses and setting related  
26 fees such as the Commissioner of Financial Institutions Services  
27 believes appropriate for the Department of Financial Institutions  
28 Services, through the Division of Corporations, to assume  
29 responsibility for the provisions of the Real Estate Law that allow  
30 real estate licensees to provide commercial and residential lending,  
31 mortgage brokerage services, and business opportunity activities,  
32 as determined pursuant to Section 48, and including, but not limited  
33 to, those activities described in subdivisions (d) and (e) of Section  
34 10131 of the Business and Professions Code: opportunity activities,  
35 including, but not limited to, those activities described in Section  
36 10008.5, Section 10030, subdivisions (d) and (e) of Section 10131,  
37 and Section 10131.1 of the Business and Professions Code, while  
38 maintaining the same level of consumer protection now afforded.  
39 Nothing in this bill or the regulations it authorizes shall contract  
40 existing consumer protections.

(B) As of the effective date of those regulations, *which shall be on or after July 1, 2012*, persons holding ~~licenses a license or licenses and license endorsements~~ issued by the Department of Real Estate shall no longer be authorized to provide lending, commercial and residential mortgage brokerage services, and business opportunity activities, including, but not limited to, ~~those activities described in subdivisions (d) and (e) of Section 10131 of the Business and Professions Code, without first obtaining those activities described in Section 10008.5, Section 10030, subdivisions (d) and (e) of Section 10131, and Section 10131.1 of the Business and Professions Code, without first obtaining a license to do so from the Division of Corporations.~~

(e) *Nothing in this bill shall expand or diminish existing authorities of the existing departments or commissioners except as set forth in subdivision (d) of Section 25. Nothing in this bill shall expand or contract any existing duties, including fiduciary duties, of their licensees. Nothing in this bill or the regulations it authorizes shall contract existing consumer protections.*

26. The chief officer of the Department of Financial Services shall be the Commissioner of Financial Services. The Commissioner of Financial Services shall be the head of the department and, except as otherwise provided in this code, shall be subject to the provisions of the Government Code relating to department heads, but need not reside in Sacramento.

27. The Commissioner of Financial Services shall be appointed by the Governor and shall hold office at the pleasure of the Governor. The appointment of the commissioner shall be subject to confirmation by the Senate. The commissioner shall receive an annual salary fixed by the Secretary of the Business, Transportation and Housing Agency and the Department of Personnel Administration.

28. The Commissioner of Financial Services shall be a citizen of the United States. The commissioner shall be chosen solely for his or her qualifications and fitness to perform the duties of his or her office.

29. Before entering upon the duties of his or her office, the Commissioner of Financial Services shall take and subscribe to the constitutional oath of office and file the same with the Secretary of State.

1     30. The Commissioner of Financial Services shall be  
2 responsible for the performance of all duties, the exercise of all  
3 powers and jurisdiction, and the assumption and discharge of all  
4 responsibilities formerly vested by law in the Department of  
5 Financial Institutions and the Department of Corporations. As  
6 described in Section 32, the Director of the Division of Financial  
7 Institutions and the Director of the Division of Corporations shall  
8 be vested with the primary responsibility for all of the duties,  
9 powers, and jurisdiction of the former Commissioner of Financial  
10 Institutions and the Commissioner of Corporations, respectively,  
11 subject to oversight by the Commissioner of Financial Services.  
12 The commissioner has, and may exercise, all the powers necessary  
13 or convenient for the administration and enforcement of these  
14 laws. The commissioner may issue such rules and regulations  
15 consistent with law as he or she may deem necessary or advisable  
16 in executing the powers, duties, and responsibilities of the  
17 Department of Financial Services.

18     31. ~~(a) (1) For purposes of this section, "federal law" includes,~~  
19 ~~but is not limited to, the United States Constitution, any federal~~  
20 ~~statute, any federal court decision, and any regulation, circular,~~  
21 ~~bulletin, interpretation, decision, order, and waiver issued by a~~  
22 ~~federal agency.~~

23     ~~(2) The definitions set forth in Section 1700 apply to this section.~~

24     ~~(b) Notwithstanding any other provision of law, except as~~  
25 ~~provided in subdivision (c), if the Commissioner of Financial~~  
26 ~~Services finds that any provision of federal law applicable to~~  
27 ~~financial services providers doing business in this state is~~  
28 ~~substantively different from the provisions of this code applicable~~  
29 ~~to financial services providers organized under the laws of this~~  
30 ~~state or operating under a license issued by the state, the~~  
31 ~~Commissioner of Financial Services may, by regulation, if he or~~  
32 ~~she deems it advisable, make that provision of federal law~~  
33 ~~applicable to financial services providers organized under the laws~~  
34 ~~of this state or operating under a license issued by the state.~~

35     ~~(c) (1) Section 11343.4 and Article 5 (commencing with Section~~  
36 ~~11346) and Article 6 (commencing with Section 11349) of Chapter~~  
37 ~~3.5 of Part 1 of Division 3 of Title 2 of the Government Code do~~  
38 ~~not apply to any regulation adopted under subdivision (b).~~

39     ~~(2) The Commissioner of Financial Services shall file any~~  
40 ~~regulation adopted pursuant to subdivision (b), together with a~~

1 citation to this section as authority for the adoption and a citation  
2 to the provisions of federal law made applicable by the regulation,  
3 with the Office of Administrative Law for filing with the Secretary  
4 of State and publication in the California Code of Regulations.

5 (3) ~~Any regulation adopted under subdivision (b) shall become~~  
6 ~~effective on the date when it is filed with the Secretary of State~~  
7 ~~unless the Commissioner of Financial Services prescribes a later~~  
8 ~~date in the regulation or in a written instrument filed with the~~  
9 ~~regulation.~~

10 (4) ~~Any regulation adopted under subdivision (b) shall expire~~  
11 ~~at 12 p.m. on December 31 of the year following the calendar year~~  
12 ~~in which it becomes effective.~~

13 (5) ~~Any regulation adopted pursuant to subdivision (b) shall be~~  
14 ~~subject to the following restrictions:~~

15 (A) ~~The Commissioner of Financial Services shall not renew~~  
16 ~~or reinstate the regulation adopted pursuant to subdivision (b).~~

17 (B) ~~The Commissioner of Financial Services shall not adopt a~~  
18 ~~new regulation pursuant to subdivision (b), to address the same~~  
19 ~~conformity issue that was addressed by the regulation that expired~~  
20 ~~pursuant to paragraph (4).~~

21 (d) ~~The Commissioner of Financial Services may adopt~~  
22 ~~regulations pursuant to subdivision (b) that are exempt from the~~  
23 ~~expiration and restrictions of subdivision (c) if the regulations are~~  
24 ~~adopted in compliance with all provisions of Chapter 3.5~~  
25 ~~(commencing with Section 11340) of Part 1 of Division 3 of the~~  
26 ~~Government Code, including those listed in paragraph (1) of~~  
27 ~~subdivision (c).~~

28 32. Effective July 1, 2011, the Division of Financial Institutions  
29 shall be headed by the former Commissioner of Financial  
30 Institutions who shall have the title Director of the Division of  
31 Financial Institutions. Effective July 1, 2011, the Division of  
32 Corporations shall be headed by the former Commissioner of  
33 Corporations who shall have the title Director of the Division of  
34 Corporations. After July 1, 2011, the Commissioner of Financial  
35 Services shall have the authority to appoint the directors of these  
36 divisions who shall hold office at the commissioner's pleasure.

37 33. The Office of Financial *and Real Estate* Consumer  
38 Advocacy shall be headed by the Director of the Office of Financial  
39 *and Real Estate* Consumer Advocacy who shall be appointed by  
40 the ~~Commissioner of Financial Services Governor~~ and shall serve

1 at the commissioner's pleasure. The Director of the Office of  
2 Financial *and Real Estate* Consumer Advocacy shall be chosen  
3 solely for his or her qualifications and fitness to perform the duties  
4 of his or her office. The annual salary of the Director of the Office  
5 of Financial *and Real Estate* Consumer Advocacy shall be fixed  
6 by the ~~Commissioner of Financial Services~~ *Secretary of the*  
7 *Business, Transportation and Housing Agency* and the Department  
8 of Personnel Administration.

9 34. (a) Effective July 1, 2011, the Commissioner of Financial  
10 Services and the Department of Financial Services shall succeed  
11 to all the rights and property of the Commissioner of Corporations  
12 and the Commissioner of Financial Institutions, and the Department  
13 of Corporations and the Department of Financial Institutions,  
14 respectively. The Commissioner of Financial Services and the  
15 Department of Financial Services shall be subject to all the debts  
16 and liabilities of the predecessor Commissioner of Corporations  
17 and the Commissioner of Financial Institutions, and the Department  
18 of Corporations and the Department of Financial Institutions, as  
19 if the Commissioner of Financial Services and the Department of  
20 Financial Services had incurred them.

21 (b) Any action or proceeding by or against the Commissioner  
22 of Corporations, the Commissioner of Financial Institutions, the  
23 Department of Corporations, or the Department of Financial  
24 Institutions may be prosecuted to judgment, which shall bind the  
25 Commissioner of Financial Services or the Department of Financial  
26 Services, respectively. Alternatively, the Commissioner of  
27 Financial Services or the Department of Financial Services may  
28 be proceeded against or substituted in place of the Commissioner  
29 of Corporations or the Commissioner of Financial Institutions and  
30 the Department of Corporations or the Department of Financial  
31 Institutions, respectively.

32 (c) The following funds and accounts shall *continue and shall*  
33 *be under the jurisdiction of the Commissioner of Financial*  
34 ~~Services:~~ *Services without being commingled. These funds shall*  
35 *only be used for purposes set forth in existing statutes or*  
36 *regulations pertaining to them, unless a subsequent statute is*  
37 *enacted changing them.*

38 (1) The Financial Institutions Fund created by Section 265.

39 (2) The Credit Union Fund created by Section 14354.

40 (3) The Guaranty Corporation Fund created by Section 18535.

1 (4) The State Corporations Fund created by subdivision (b) of  
2 Section 13978.6 of the Government Code.

3 (5) Any other fund or account subject to the jurisdiction of the  
4 former Department of Corporations or the former Department of  
5 Financial Institutions.

6 (d) All agreements entered into with, and orders and regulations  
7 issued by, the Commissioner of Corporations or the Commissioner  
8 of Financial Institutions, or the Department of Financial Institutions  
9 or the Department of Corporations, shall continue in effect as if  
10 the agreements were entered into with, and the orders and  
11 regulations were issued by, the Commissioner of Financial Services  
12 or the Department of Financial Services.

13 35. (a) The Commissioner of Financial Services may make  
14 the agreements that he or she deems necessary or appropriate in  
15 exercising his or her powers.

16 (b) (1) The agreements authorized under subdivision (a) may  
17 include, but are not limited to, agreements with agencies of this  
18 state, of other states of the United States, of the United States, or  
19 of foreign nations that regulate financial institutions, relating to  
20 oversight of financial services.

21 (2) Any agreement with a governmental agency that regulates  
22 financial services is exempt from the advertising and competitive  
23 bidding requirements of the Public Contract Code.

24 36. Notwithstanding any other law, the Commissioner of  
25 Financial Services may adopt and implement any method of  
26 accepting electronic filings of applications, reports, or other  
27 matters, which, in the opinion of the commissioner, is secure. Any  
28 method of electronic filing chosen by the commissioner shall  
29 include a method to verify the identity of the person making the  
30 filing. The verification shall be deemed to satisfy all other  
31 verifications required by this division, and shall have the same  
32 force and effect as the use of manual signatures.

33 37. The Commissioner of Financial Services shall appoint a  
34 chief deputy who shall hold office at the pleasure of the  
35 Commissioner of Financial Services. The annual salary of the chief  
36 deputy shall be fixed by the Commissioner of Financial Services  
37 with the approval of the Director of Finance. The chief deputy  
38 shall be chosen solely for his or her qualifications and fitness to  
39 perform the duties of his or her office and for the ability to succeed  
40 to the office of the Commissioner of Financial Services, if needed.



1 If the Commissioner of Financial Services is unable to perform  
2 his or her duties for more than 30 consecutive days or if the office  
3 of the Commissioner of Financial Services becomes vacant, the  
4 chief deputy shall have all the powers and duties of the  
5 Commissioner of Financial Services until the return or recovery  
6 of the Commissioner of Financial Services, or, in case of a vacancy,  
7 until a new Commissioner of Financial Services is appointed by  
8 the Governor and qualifies to hold office.

9 38. The Commissioner of Financial Services may employ  
10 deputies in addition to the chief deputy and other employees that  
11 he or she may need to discharge in a proper manner the duties  
12 imposed upon him or her by law. The commissioner shall prescribe  
13 their duties and fix their compensation in accordance with  
14 classifications made by the State Personnel Board. The  
15 commissioner may also, at those times and on those terms as may  
16 be approved by the Governor, employ those attorneys as he or she  
17 may need.

18 39. Before entering upon the duties of his or her office, each  
19 deputy of the Commissioner of Financial Services, the Director  
20 of the Division of Financial Institutions, the Director of the  
21 Division of Corporations, and the Director of the Office of  
22 Financial *and Real Estate* Consumer Advocacy shall take and  
23 subscribe to the constitutional oath of office and file the same with  
24 the Secretary of State.

25 40. The Commissioner of Financial Services may require, at  
26 any time, of any deputy, the Director of the Division of Financial  
27 Institutions, the Director of the Division of Corporations, the  
28 Director of the Office of Financial *and Real Estate* Consumer  
29 Advocacy, or any other employee of the department, an official  
30 bond in such amount as he or she may deem necessary. The  
31 premium for bonds required by the commissioner shall be an  
32 expense of the department.

33 41. On or before July 1, 2011, the Commissioner of Financial  
34 Services shall adopt and promulgate a Conflict of Interest Code  
35 pursuant to the provisions of Article 3 of Chapter 3 of Title 9 of  
36 the Government Code (commencing with Section 87300). The  
37 Conflict of Interest Code shall have the force of law and any  
38 violation of the Conflict of Interest Code by a designated employee  
39 shall be deemed a violation of Chapter 3 of Title 9 of the  
40 Government Code.

42. In addition to the offices previously maintained by the Department of Financial Institutions and the Department of Corporations, the Commissioner of Financial Services may establish offices in any other location in the state that he or she considers appropriate. The commissioner shall provide at the expense of the department such office space, furniture, and equipment as may be necessary or convenient for the transaction of the business of the Department of Financial Services.

43. The Department of Financial Services may expend moneys in accordance with law for the necessary travel expenses of officers and employees of the department while traveling in the line of their duties either within or without the state.

44. The Commissioner of Financial Services shall adopt and keep an official seal. Papers executed by the Commissioner of Financial Services in his or her official capacity pursuant to law and bearing the seal, or copies thereof certified by him or her, shall be received in evidence in like manner as the original and may be recorded in the same manner and with the same effect as a deed regularly acknowledged.

45. Notwithstanding any other law, as of July 1, 2011, all references to the Department of Financial Institutions shall be deemed to refer to the Division of Financial Institutions within the Department of Financial Services and all references to the Department of Corporations shall be deemed to refer to the Division of Corporations within the Department of Financial Services.

46. (a) The Department of Real Estate shall continue to exist in state government, subject to the limitations, effective July 1, 2012, set forth in subdivision (d) of Section 25 with regard to authority that is transferred to the Department of Financial Services, Division of Corporations, and shall continue to be located within the Business, Transportation and Housing Agency.

(b) Effective July 1, 2011, the Office of Real Estate Appraisers shall be transferred to the Department of Real Estate. The Office of Real Estate Appraisers shall be primarily responsible for the execution of all laws previously under its jurisdiction subject to oversight by the Director of the Office of Real Estate Appraisers. The Real Estate Appraisers' Licensing and Certification Law (Part 3 (commencing with Section 11300) of Division 4 of the Business and Professions Code), shall be deemed to be part of the Real

1 Estate Law (Part 1 (commencing with Section 10000) of Division  
2 4 of the Business and Professions Code).

3 47. After transfer to the Department of Real Estate on July 1,  
4 2011, the Office of Real Estate Appraisers shall continue to be  
5 headed by the Director of the Office of Real Estate Appraisers.  
6 The Director of the Office of Real Estate Appraisers shall be  
7 appointed by the Governor and shall serve at his or her pleasure.  
8 *The qualifications for the position of Director of the Office of Real*  
9 *Estate Appraisers shall remain unchanged.*

10 48. On or before January 1, 2011, and for purposes of  
11 implementation of Section 25, the Secretary of the Business,  
12 Transportation and Housing Agency, in consultation with the  
13 Commissioner of Financial Institutions, the Commissioner of  
14 Corporations, and the Real Estate Commissioner, shall submit a  
15 report to the Legislature that addresses the following:

16 (a) Recommendations regarding all appropriate areas for  
17 consolidation of the operations, licensing frameworks, regulations,  
18 and other aspects of, on and after July 1, 2011, the Department of  
19 Financial Institutions and Department of Corporations, and of  
20 pertinent *commercial and residential* lending, mortgage brokerage,  
21 and business opportunity activities by Department of Real Estate  
22 licensees.

23 (b) Recommendations regarding any new or different authorities  
24 needed to address any gaps in, or shortcomings of, the regulation  
25 of financial services in California.

26 (c) Recommendations regarding the possible consolidation of  
27 the regulation of any other financial services that currently takes  
28 place outside of the jurisdiction of the Business, Transportation  
29 and Housing Agency.

30 (d) Recommendations regarding the consolidation of the  
31 regulation of home mortgage lending in California, including, but  
32 not limited to, recommendations on licensing schemes, including  
33 the California Finance Lenders Law (Division 9 (commencing  
34 with Section 22000), the California Residential Mortgage Lending  
35 Act (Division 20 (commencing with Section 50000), the Real  
36 Estate Law (Part 1 (commencing with Section 10000) of Division  
37 4 of the Business and Professions Code), and laws governing the  
38 operation of state and federally chartered banks or credit unions.

39 (e) Recommendations regarding any firewalls between the future  
40 Department of Financial Services and its divisions and ~~office of~~

1 *the Office of Financial and Real Estate* Consumer Advocacy, or  
2 employees, that may be advisable.

3 (f) Recommendations regarding an efficient and effective  
4 implementation of the federal Secure and Fair Enforcement for  
5 Mortgage Licensing Act of 2008 (Public Law 110-289) within the  
6 Department of Financial Services.

7 (g) Recommendations regarding additional changes that should  
8 be made in light of any developments at the federal level regarding  
9 the regulation of financial services.

10 (h) Recommendations to better serve and protect financial *and*  
11 *real estate* consumers in California, including, but not limited to,  
12 public outreach and public protections.

13 (i) Recommendations regarding the advisability of establishing  
14 *new* recovery accounts to protect financial services *and real estate*  
15 consumers in California.

16 (j) Recommendations regarding any staffing changes that are  
17 advisable.

18 (k) Recommendations regarding any information technology  
19 changes that are advisable.

20 (l) Recommendations regarding the optimal number, size, and  
21 locations of offices for the Department of Financial Services and  
22 its divisions and the Office of Financial *and Real Estate* Consumer  
23 Advocacy.

24 (m) Recommendations regarding the structure of fees and other  
25 revenue sources, as well as reserve accounts.

26 (n) The estimated cost impacts of all recommendations made  
27 and details regarding how those estimated impacts are expected  
28 to manifest.

29 (o) Any other recommendations the Secretary of the Business,  
30 Transportation and Housing Agency believes would be helpful.

31 (p) Recommendations regarding any necessary statutory changes  
32 required to achieve the recommendations made in the report.

33 (q) *Recommendations regarding any necessary regulation*  
34 *changes required to achieve the recommendations made in the*  
35 *report.*

36 49. On or before January 1, 2011, and for purposes of  
37 implementing Sections 46 and 47, *the Secretary of the Business,*  
38 *Transportation and Housing Agency in consultation with the Real*  
39 *Estate Commissioner and the Director of the Office of Real Estate*  
40 Appraisers shall submit a joint report to the ~~Secretary of Business,~~

1 ~~Transportation and Housing~~ *Legislature* that addresses the  
2 following:

3 (a) Recommendations regarding the consolidation of the  
4 operations, licensing frameworks, and other aspects of the  
5 Department of Real Estate and the Office of Real Estate Appraisers.

6 (b) Recommendations regarding any new or different authorities  
7 needed to effect the consolidation.

8 ~~(c) Recommendations regarding any firewalls between the~~  
9 ~~Department of Real Estate and the Office of Real Estate Appraisers~~  
10 ~~or employees that may be advisable to ensure compliance with~~  
11 ~~federal law. Those recommendations shall protect the independence~~  
12 ~~of the appraiser regulatory function from realty-related activities,~~  
13 ~~and ensure that decisions relating to appraisal license issuance,~~  
14 ~~revocation, and disciplinary actions shall be made by the Director~~  
15 ~~of the Office of Real Estate Appraisers and may not be made by~~  
16 ~~the Real Estate Commissioner.~~

17 ~~(d)~~

18 (c) Recommendations regarding any necessary statutory changes  
19 required to achieve the recommendations made in the report.

20 ~~(e)~~

21 (d) Recommendations regarding any necessary regulation  
22 changes required to achieve the recommendations in the report.

23 ~~(f)~~

24 (e) Recommendations regarding the structure of fees and other  
25 revenue sources, as well as reserve accounts.

26 ~~(g)~~

27 (f) Recommendations regarding the future of the Recovery  
28 Account of the Real Estate Fund and the advisability of establishing  
29 additional or different recovery accounts to protect consumers in  
30 real estate transactions in California.

31 ~~(h)~~

32 (g) Recommendations regarding staffing changes that are  
33 advisable.

34 ~~(i)~~

35 (h) Recommendations regarding technology changes that are  
36 advisable.

37 ~~(j)~~

38 (i) Recommendations regarding state representation at  
39 administrative hearings.

40 ~~(k)~~

1 (j) The estimated cost impacts of all recommendations made  
2 and details regarding how those estimated impacts are expected  
3 to manifest.

4 ~~(h)~~

5 (k) Any other recommendations that the Real Estate  
6 Commissioner and the Director of the Office of Real Estate  
7 Appraisers believes would be helpful.

8 ~~(m)~~

9 (l) Recommendations addressing any federal level restrictions  
10 or impositions on such consolidation of entities.

11 50. Fourteen days after the effective date of this act, the  
12 Secretary of the Business, Transportation and Housing Agency  
13 shall post the items listed in Sections 48 and 49 on the Internet  
14 Web site of the agency in a manner that provides for public  
15 comment for a period of 120 days. The posting shall also set forth  
16 a mailing address for members of the public to use should they  
17 choose to submit comments by mail instead of via the Internet Web  
18 site during this period. All comments shall specifically reference  
19 the sections to which they are directed. Public comments received  
20 shall be considered in making the secretary's final  
21 recommendations pursuant to Sections 48 and 49.

22 SEC. 17. Section 112 of the Financial Code is amended to read:

23 112. "Commissioner" means the Commissioner of Financial  
24 Institutions and "department" means the Department of Financial  
25 Institutions.

26 This section shall become inoperative on July 1, 2011, and, as  
27 of January 1, 2012, is repealed, unless a later enacted statute, that  
28 becomes operative on or before January 1, 2012, deletes or extends  
29 the dates on which it becomes inoperative and is repealed.

30 SEC. 18. Section 112 is added to the Financial Code, to read:

31 112. (a) As used in this division, the following terms have the  
32 following meanings:

33 (1) "Department of Financial Institutions" or "department"  
34 means the Department of Financial Services, Division of Financial  
35 Institutions.

36 (2) "Commissioner of Financial Institutions" or "commissioner"  
37 means the Director of the Division of Financial Institutions.

38 (b) This section shall become operative on July 1, 2011.

39 SEC. 19. Section 210 of the Financial Code is amended to read:

1     210. The chief officer of the Department of Financial  
2 Institutions is the Commissioner of Financial Institutions. The  
3 Commissioner of Financial Institutions is the head of the  
4 department and, except as otherwise provided in this code, is  
5 subject to the provisions of the Government Code relating to  
6 department heads, but need not reside in Sacramento.

7     This section shall become inoperative on July 1, 2011, and, as  
8 of January 1, 2012, is repealed, unless a later enacted statute, that  
9 becomes operative on or before January 1, 2012, deletes or extends  
10 the dates on which it becomes inoperative and is repealed.

11     SEC. 20. Section 210 is added to the Financial Code, to read:

12     210. The Director of the Division of Financial Institutions is  
13 the head of the Division of Financial Institutions, as specified in  
14 Division 0.5 (commencing with Section 25).

15     This section shall become operative on July 1, 2011.

16     SEC. 21. Section 252 of the Financial Code is amended to read:

17     252. The commissioner shall adopt and keep an official seal.  
18 Papers executed by the commissioner in his or her official capacity  
19 pursuant to law and bearing the seal, or copies thereof certified by  
20 him or her, shall be received in evidence in like manner as the  
21 original and may be recorded in the same manner and with the  
22 same effect as a deed regularly acknowledged.

23     This section shall become inoperative on July 1, 2011, and, as  
24 of January 1, 2012, is repealed, unless a later enacted statute, that  
25 becomes operative on or before January 1, 2012, deletes or extends  
26 the dates on which it becomes inoperative and is repealed.

27     SEC. 22. Section 4805.055 of the Financial Code is amended  
28 to read:

29     4805.055. "Commissioner" means the Commissioner of  
30 Financial Institutions.

31     This section shall become inoperative on July 1, 2011, and, as  
32 of January 1, 2012, is repealed, unless a later enacted statute, that  
33 becomes operative on or before January 1, 2012, deletes or extends  
34 the dates on which it becomes inoperative and is repealed.

35     SEC. 23. Section 4805.055 is added to the Financial Code, to  
36 read:

37     4805.055. (a) As used in this division, the following terms  
38 have the following meanings:

1 (1) “Department of Financial Institutions” or “department”  
2 means the Department of Financial Services, Division of Financial  
3 Institutions.

4 (2) “Commissioner of Financial Institutions” or “commissioner”  
5 means the Director of the Division of Financial Institutions.

6 (b) This section shall become operative on July 1, 2011.

7 SEC. 24. Section 4970 of the Financial Code is amended to  
8 read:

9 4970. For purposes of this division:

10 (a) “Annual percentage rate” means the annual percentage rate  
11 for the loan calculated according to the provisions of the federal  
12 Truth in Lending Act and the regulations adopted thereunder by  
13 the Federal Reserve Board.

14 (b) “Covered loan” means a consumer loan in which the original  
15 principal balance of the loan does not exceed the most current  
16 conforming loan limit for a single-family first mortgage loan  
17 established by the Federal National Mortgage Association in the  
18 case of a mortgage or deed of trust, and where one of the following  
19 conditions are met:

20 (1) For a mortgage or deed of trust, the annual percentage rate  
21 at consummation of the transaction will exceed by more than eight  
22 percentage points the yield on Treasury securities having  
23 comparable periods of maturity on the 15th day of the month  
24 immediately preceding the month in which the application for the  
25 extension of credit is received by the creditor.

26 (2) The total points and fees payable by the consumer at or  
27 before closing for a mortgage or deed of trust will exceed 6 percent  
28 of the total loan amount.

29 (c) “Points and fees” shall include the following:

30 (1) All items required to be disclosed as finance charges under  
31 Sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal  
32 Regulations, including the Official Staff Commentary, as amended  
33 from time to time, except interest.

34 (2) All compensation and fees paid to mortgage brokers in  
35 connection with the loan transaction.

36 (3) All items listed in Section 226.4(c)(7) of Title 12 of the Code  
37 of Federal Regulations, only if the person originating the covered  
38 loan receives direct compensation in connection with the charge.

39 (d) “Consumer loan” means a consumer credit transaction that  
40 is secured by real property located in this state used, or intended



1 to be used or occupied, as the principal dwelling of the consumer  
2 that is improved by a one-to-four residential unit. “Consumer loan”  
3 does not include a reverse mortgage, an open line of credit as  
4 defined in Part 226 of Title 12 of the Code of Federal Regulations  
5 (Regulation Z), or a consumer credit transaction that is secured by  
6 rental property or second homes. “Consumer loan” does not include  
7 a bridge loan. For purposes of this division, a bridge loan is any  
8 temporary loan, having a maturity of one year or less, for the  
9 purpose of acquisition or construction of a dwelling intended to  
10 become the consumer’s principal dwelling.

11 (e) “Original principal balance” means the total initial amount  
12 the consumer is obligated to repay on the loan.

13 (f) “Licensing agency” shall mean the Department of Real Estate  
14 for licensed real estate brokers, the Department of Corporations  
15 for licensed residential mortgage lenders and licensed finance  
16 lenders and brokers, and the Department of Financial Institutions  
17 for commercial and industrial banks and savings associations and  
18 credit unions organized in this state. On and after July 1, 2011, or  
19 as otherwise specified, “licensing agency” shall instead be defined  
20 as specified in Sections 25, 45, and 46.

21 (g) “Licensed person” means a real estate broker licensed under  
22 the Real Estate Law (Part 1 (commencing with Section 10000) of  
23 Division 4 of the Business and Professions Code), a finance lender  
24 or broker licensed under the California Finance Lenders Law  
25 (Division 9 (commencing with Section 22000)), a residential  
26 mortgage lender licensed under the California Residential Mortgage  
27 Lending Act (Division 20 (commencing with Section 50000)), a  
28 commercial or industrial bank organized under the Banking Law  
29 (Division 1 (commencing with Section 99)), a savings association  
30 organized under the Savings Association Law (Division 2  
31 (commencing with Section 5000)), and a credit union organized  
32 under the California Credit Union Law (Division 5 (commencing  
33 with Section 14000)). Nothing in this division shall be construed  
34 to prevent any enforcement by a governmental entity against any  
35 person who originates a loan and who is exempt or excluded from  
36 licensure by all of the licensing agencies, based on a violation of  
37 any provision of this division. Nothing in this division shall be  
38 construed to prevent the Department of Real Estate from enforcing  
39 this division against a licensed salesperson employed by a licensed  
40 real estate broker as if that salesperson were a licensed person

1 under this division. A licensed person includes any person engaged  
2 in the practice of consumer lending, as defined in this division, for  
3 which a license is required under any other provision of law, but  
4 whose license is invalid, suspended or revoked, or where no license  
5 has been obtained.

6 (h) “Originate” means to arrange, negotiate, or make a consumer  
7 loan.

8 (i) “Servicer” has the same meaning provided in Section 6 (i)(2)  
9 of the Real Estate Settlement Procedures Act of 1974.

10 SEC. 25. Section 5104 of the Financial Code is amended to  
11 read:

12 5104. “Commissioner” means the Commissioner of Financial  
13 Institutions.

14 This section shall become inoperative on July 1, 2011, and, as  
15 of January 1, 2012, is repealed, unless a later enacted statute, that  
16 becomes operative on or before January 1, 2012, deletes or extends  
17 the dates on which it becomes inoperative and is repealed.

18 SEC. 26. Section 5104 is added to the Financial Code, to read:

19 5104. As used in this division, “Commissioner of Financial  
20 Institutions” or “commissioner” means the Director of the Division  
21 of Financial Institutions.

22 This section shall become operative on July 1, 2011.

23 SEC. 27. Section 5106 of the Financial Code is amended to  
24 read:

25 5106. “Department” means the Department of Financial  
26 Institutions.

27 This section shall become inoperative on July 1, 2011, and, as  
28 of January 1, 2012, is repealed, unless a later enacted statute, that  
29 becomes operative on or before January 1, 2012, deletes or extends  
30 the dates on which it becomes inoperative and is repealed.

31 SEC. 28. Section 5106 is added to the Financial Code, to read:

32 5106. As used in this division, “Department of Financial  
33 Institutions” or “department” means the Department of Financial  
34 Services, Division of Financial Institutions.

35 This section shall become operative on July 1, 2011.

36 SEC. 29. Section 12003 of the Financial Code is amended to  
37 read:

38 12003. “Commissioner” means the Commissioner of  
39 Corporations of the State of California, or any deputy, investigator,  
40 auditor, or any other person employed by him or her.

1 This section shall become inoperative on July 1, 2011, and, as  
2 of January 1, 2012, is repealed, unless a later enacted statute, that  
3 becomes operative on or before January 1, 2012, deletes or extends  
4 the dates on which it becomes inoperative and is repealed.

5 SEC. 30. Section 12003 is added to the Financial Code, to read:

6 12003. (a) As used in this division, the following terms have  
7 the following meanings:

8 (1) "Department of Corporations" or "department" means the  
9 Department of Financial Services, Division of Corporations.

10 (2) "Commissioner of Corporations" or "commissioner" means  
11 the Director of the Division of Corporations, or any deputy,  
12 investigator, auditor, or any other person employed by him or her.

13 (b) This section shall become operative on July 1, 2011.

14 SEC. 31. Section 14003 of the Financial Code is amended to  
15 read:

16 14003. "Commissioner" means the Commissioner of Financial  
17 Institutions of the State of California.

18 This section shall become inoperative on July 1, 2011, and, as  
19 of January 1, 2012, is repealed, unless a later enacted statute, that  
20 becomes operative on or before January 1, 2012, deletes or extends  
21 the dates on which it becomes inoperative and is repealed.

22 SEC. 32. Section 14003 is added to the Financial Code, to read:

23 14003. (a) As used in this division, the following terms have  
24 the following meanings:

25 (1) "Department of Financial Institutions" or "department"  
26 means the Department of Financial Services, Division of Financial  
27 Institutions.

28 (2) "Commissioner of Financial Institutions" or "commissioner"  
29 means the Director of the Division of Financial Institutions.

30 (b) This section shall become operative on July 1, 2011.

31 SEC. 33. Section 17002 of the Financial Code is amended to  
32 read:

33 17002. "Commissioner" means the Commissioner of  
34 Corporations.

35 This section shall become inoperative on July 1, 2011, and, as  
36 of January 1, 2012, is repealed, unless a later enacted statute, that  
37 becomes operative on or before January 1, 2012, deletes or extends  
38 the dates on which it becomes inoperative and is repealed.

39 SEC. 34. Section 17002 is added to the Financial Code, to read:

1 17002. (a) As used in this division, the following terms have  
2 the following meanings:

3 (1) “Department of Corporations” or “department” means the  
4 Department of Financial Services, Division of Corporations.

5 (2) “Commissioner of Corporations” or “commissioner” means  
6 the Director of the Division of Corporations.

7 (b) This section shall become operative on July 1, 2011.

8 SEC. 35. Section 18002 of the Financial Code is amended to  
9 read:

10 18002. “Commissioner” means the Commissioner of Financial  
11 Institutions of the State of California.

12 This section shall become inoperative on July 1, 2011, and, as  
13 of January 1, 2012, is repealed, unless a later enacted statute, that  
14 becomes operative on or before January 1, 2012, deletes or extends  
15 the dates on which it becomes inoperative and is repealed.

16 SEC. 36. Section 18002 is added to the Financial Code, to read:

17 18002. As used in this division, “Commissioner of Financial  
18 Institutions” or “commissioner” means the Director of the Division  
19 of Financial Institutions.

20 This section shall become operative on July 1, 2011.

21 SEC. 37. Section 18002.5 of the Financial Code is amended  
22 to read:

23 18002.5. “Department” means the Department of Financial  
24 Institutions.

25 This section shall become inoperative on July 1, 2011, and, as  
26 of January 1, 2012, is repealed, unless a later enacted statute, that  
27 becomes operative on or before January 1, 2012, deletes or extends  
28 the dates on which it becomes inoperative and is repealed.

29 SEC. 38. Section 18002.5 is added to the Financial Code, to  
30 read:

31 18002.5. As used in this division, “Department of Financial  
32 Institutions” or “department” means the Department of Financial  
33 Services, Division of Financial Institutions.

34 This section shall become operative on July 1, 2011.

35 SEC. 39. Section 22005 of the Financial Code is amended to  
36 read:

37 22005. “Commissioner” means the Commissioner of  
38 Corporations.

39 This section shall become inoperative on July 1, 2011, and, as  
40 of January 1, 2012, is repealed, unless a later enacted statute, that

1 becomes operative on or before January 1, 2012, deletes or extends  
2 the dates on which it becomes inoperative and is repealed.

3 SEC. 40. Section 22005 is added to the Financial Code, to read:

4 22005. (a) As used in this division, the following terms have  
5 the following meanings:

6 (1) "Department of Corporations" or "department" means the  
7 Department of Financial Services, Division of Corporations.

8 (2) "Commissioner of Corporations" or "commissioner" means  
9 the Director of the Division of Corporations.

10 (b) This section shall become operative on July 1, 2011.

11 SEC. 41. Section 23001 of the Financial Code is amended to  
12 read:

13 23001. As used in this division, the following terms have the  
14 following meanings:

15 (a) "Deferred deposit transaction" means a transaction whereby  
16 a person defers depositing a customer's personal check until a  
17 specific date, pursuant to a written agreement for a fee or other  
18 charge, as provided in Section 23035.

19 (b) "Commissioner" means the Commissioner of Corporations,  
20 except as specified in Section 23002.

21 (c) "Department" means the Department of Corporations, except  
22 as specified in Section 23002.

23 (d) "Licensee" means any person who offers, originates, or  
24 makes a deferred deposit transaction, who arranges a deferred  
25 deposit transaction for a deferred deposit originator, who acts as  
26 an agent for a deferred deposit originator, or who assists a deferred  
27 deposit originator in the origination of a deferred deposit  
28 transaction. However, "licensee" does not include a state or  
29 federally chartered bank, thrift, savings association, industrial loan  
30 company, or credit union. "Licensee" also does not include a retail  
31 seller engaged primarily in the business of selling consumer goods,  
32 including consumables, to retail buyers that cashes checks or issues  
33 money orders for a minimum fee not exceeding two dollars (\$2)  
34 as a service to its customers that is incidental to its main purpose  
35 or business. "Licensee" also does not include an employee regularly  
36 employed by a licensee at the licensee's place of business. An  
37 employee, when acting under the scope of the employee's  
38 employment, shall be exempt from any other law from which the  
39 employee's employer is exempt.

(e) “Person” means an individual, a corporation, a partnership, a limited liability company, a joint venture, an association, a joint stock company, a trust, an unincorporated organization, a government entity, or a political subdivision of a government entity.

(f) “Deferred deposit originator” means a person who offers, originates, or makes a deferred deposit transaction.

SEC. 42. Section 23002 is added to the Financial Code, to read:

23002. (a) As used in this division, the following terms have the following meanings:

(1) “Department of Corporations” or “department” means the Department of Financial Services, Division of Corporations.

(2) “Commissioner of Corporations” or “commissioner” means the Director of the Division of Corporations.

(b) This section shall become operative on July 1, 2011.

SEC. 43. Section 30002 of the Financial Code is amended to read:

30002. “Commissioner” means the Commissioner of Corporations.

This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 44. Section 30002 is added to the Financial Code, to read:

30002. (a) As used in this division, the following terms have the following meanings:

(1) “Department of Corporations” or “department” means the Department of Financial Services, Division of Corporations.

(2) “Commissioner of Corporations” or “commissioner” means the Director of the Division of Corporations.

(b) This section shall become operative on July 1, 2011.

SEC. 45. Section 31055 of the Financial Code is amended to read:

31055. “Commissioner” means the Commissioner of Financial Institutions, or any person to whom the Commissioner of Financial Institutions delegates the authority to act for him or her in the particular matter.

This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that

1 becomes operative on or before January 1, 2012, deletes or extends  
2 the dates on which it becomes inoperative and is repealed.

3 SEC. 46. Section 31055 is added to the Financial Code, to read:

4 31055. (a) As used in this division, the following terms have  
5 the following meanings:

6 (1) "Department of Financial Institutions" or "department"  
7 means the Department of Financial Services, Division of Financial  
8 Institutions.

9 (2) "Commissioner of Financial Institutions" or "commissioner"  
10 means the Director of the Division of Financial Institutions, or any  
11 person to whom the director delegates the authority to act for him  
12 or her in a particular matter.

13 (b) This section shall become operative on July 1, 2011.

14 SEC. 47. Section 33045.5 of the Financial Code is amended  
15 to read:

16 33045.5. "Commissioner" means the Commissioner of  
17 Financial Institutions, or any person to whom the Commissioner  
18 of Financial Institutions delegates the authority to act for the  
19 Commissioner of Financial Institutions in this matter.

20 This section shall become inoperative on July 1, 2011, and, as  
21 of January 1, 2012, is repealed, unless a later enacted statute, that  
22 becomes operative on or before January 1, 2012, deletes or extends  
23 the dates on which it becomes inoperative and is repealed.

24 SEC. 48. Section 33045.5 is added to the Financial Code, to  
25 read:

26 33045.5. (a) As used in this division, the following terms have  
27 the following meanings:

28 (1) "Department of Financial Institutions" or "department"  
29 means the Department of Financial Services, Division of Financial  
30 Institutions.

31 (2) "Commissioner of Financial Institutions" or "commissioner"  
32 means the Director of the Division of Financial Institutions, or any  
33 person to whom the director delegates the authority to act for him  
34 or her in a particular matter.

35 (b) This section shall become operative on July 1, 2011.

36 SEC. 49. Section 50003.5 is added to the Financial Code, to  
37 read:

38 50003.5. (a) Notwithstanding Section 50003, as used in this  
39 division, the following terms have the following meanings:

1 (1) “Department of Corporations” or “department” means the  
2 Department of Financial Services, Division of Corporations.

3 (2) “Commissioner of Corporations” or “commissioner” means  
4 the Director of the Division of Corporations.

5 (b) This section shall become operative on July 1, 2011.

6 SEC. 50. Section 13975 of the Government Code is amended  
7 to read:

8 13975. (a) The Business and Transportation Agency in state  
9 government is hereby renamed the Business, Transportation and  
10 Housing Agency. The agency consists of the State Department of  
11 Alcoholic Beverage Control, the Department of the California  
12 Highway Patrol, the Department of Corporations, the Department  
13 of Housing and Community Development, the Department of  
14 Motor Vehicles, the Department of Real Estate, the Department  
15 of Transportation, the Department of Financial Institutions, the  
16 Department of Managed Health Care, and the Board of Pilot  
17 Commissioners for the Bays of San Francisco, San Pablo, and  
18 Suisun. The California Housing Finance Agency is also located  
19 within the Business, Transportation and Housing Agency, as  
20 specified in Division 31 (commencing with Section 50000) of the  
21 Health and Safety Code.

22 (b) This section shall become inoperative on July 1, 2011, and,  
23 as of January 1, 2012, is repealed, unless a later enacted statute,  
24 that becomes operative on or before January 1, 2012, deletes or  
25 extends the dates on which it becomes inoperative and is repealed.

26 SEC. 51. Section 13975 is added to the Government Code, to  
27 read:

28 13975. (a) The Business and Transportation Agency in state  
29 government is hereby renamed the Business, Transportation and  
30 Housing Agency. The agency consists of the State Department of  
31 Alcoholic Beverage Control, the Department of the California  
32 Highway Patrol, the Department of Financial Services, the  
33 Department of Housing and Community Development, the  
34 Department of Motor Vehicles, the Department of Real Estate, the  
35 Department of Transportation, the Department of Managed Health  
36 Care, and the Board of Pilot Commissioners for the Bays of San  
37 Francisco, San Pablo, and Suisun. The California Housing Finance  
38 Agency is also located within the Business, Transportation and  
39 Housing Agency, as specified in Division 31 (commencing with  
40 Section 50000) of the Health and Safety Code.



1 (b) This section shall become operative on July 1, 2011.

2 SEC. 52. Section 13978.6 of the Government Code is amended  
3 to read:

4 13978.6. (a) The Secretary of the Business, Transportation  
5 and Housing Agency shall be generally responsible for the sound  
6 fiscal management of each department, office, or other unit within  
7 the agency. The secretary shall review and approve the proposed  
8 budget of each department, office, or other unit. The secretary  
9 shall hold the head of each department, office, or other unit  
10 responsible for management control over the administrative, fiscal,  
11 and program performance of his or her department, office, or other  
12 unit. The secretary shall review the operations and evaluate the  
13 performance at appropriate intervals of each department, office,  
14 or other unit, and shall seek continually to improve the organization  
15 structure, the operating policies, and the management information  
16 systems of each department, office, or other unit.

17 (b) There is in the Business, Transportation, and Housing  
18 Agency a Department of Corporations, which has the responsibility  
19 for administering various laws. In order to effectively support the  
20 Department of Corporations in the administration of these laws,  
21 there is hereby established the State Corporations Fund. All  
22 expenses and salaries of the Department of Corporations shall be  
23 paid out of the State Corporations Fund. Therefore, notwithstanding  
24 any provision of any law administered by the Department of  
25 Corporations declaring that fees, reimbursements, assessments, or  
26 other money or amounts charged and collected by the Department  
27 of Corporations under these laws are to be delivered or transmitted  
28 to the Treasurer and deposited to the credit of the General Fund,  
29 on and after July 1, 1992, all fees, reimbursements, assessments,  
30 and other money or amounts charged and collected under these  
31 laws and attributable to the 1992–93 fiscal year and subsequent  
32 fiscal years shall be delivered or transmitted to the Treasurer and  
33 deposited to the credit of the State Corporations Fund.

34 (c) Funds appropriated from the State Corporations Fund and  
35 made available for expenditure for any law or program of the  
36 Department of Corporations may come from the following:

37 (1) Fees and any other amounts charged and collected pursuant  
38 to Section 25608 of the Corporations Code, except for fees and  
39 other amounts charged and collected pursuant to subdivisions (o)  
40 to (r), inclusive, of Section 25608 of the Corporations Code.

1 (2) Fees collected pursuant to subdivisions (a), (b), (c), and (d)  
2 of Section 25608.1 of the Corporations Code.

3 (d) This section shall become inoperative on July 1, 2011, and,  
4 as of January 1, 2012, is repealed, unless a later enacted statute,  
5 that becomes operative on or before January 1, 2012, deletes or  
6 extends the dates on which it becomes inoperative and is repealed.

7 SEC. 53. Section 13978.6 is added to the Government Code,  
8 to read:

9 13978.6. (a) The Secretary of the Business, Transportation  
10 and Housing Agency shall be generally responsible for the sound  
11 fiscal management of each department, office, or other unit within  
12 the agency. The secretary shall review and approve the proposed  
13 budget of each department, office, or other unit. The secretary  
14 shall hold the head of each department, office, or other unit  
15 responsible for management control over the administrative, fiscal,  
16 and program performance of his or her department, office, or other  
17 unit. The secretary shall review the operations and evaluate the  
18 performance at appropriate intervals of each department, office,  
19 or other unit, and shall seek continually to improve the organization  
20 structure, the operating policies, and the management information  
21 systems of each department, office, or other unit.

22 (b) There is in the Business, Transportation and Housing Agency  
23 a Department of Financial Services, which has the responsibility  
24 for administering various laws. In order to effectively support the  
25 Department of Financial Services in the administration of these  
26 laws, there is hereby continued in existence the State Corporations  
27 Fund. All expenses and salaries of the Department of Financial  
28 Services shall be paid out of the State Corporations Fund.  
29 Therefore, notwithstanding any provision of any law administered  
30 by the Department of Financial Services declaring that fees,  
31 reimbursements, assessments, or other money or amounts charged  
32 and collected by the Department of Financial Services under these  
33 laws are to be delivered or transmitted to the Treasurer and  
34 deposited to the credit of the General Fund, on and after July 1,  
35 1992, all fees, reimbursements, assessments, and other money or  
36 amounts charged and collected under these laws and attributable  
37 to the 1992–93 fiscal year and subsequent fiscal years shall be  
38 delivered or transmitted to the Treasurer and deposited to the credit  
39 of the State Corporations Fund.

- 1 (c) Funds appropriated from the State Corporations Fund and
- 2 made available for expenditure for any law or program of the
- 3 Department of Financial Services may come from the following:
- 4 (1) Fees and any other amounts charged and collected pursuant
- 5 to Section 25608 of the Corporations Code, except for fees and
- 6 other amounts charged and collected pursuant to subdivisions (o)
- 7 to (r), inclusive, of Section 25608 of the Corporations Code.
- 8 (2) Fees collected pursuant to subdivisions (a), (b), (c), and (d)
- 9 of Section 25608.1 of the Corporations Code.
- 10 (d) This section shall become operative on July 1, 2011.

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